

POLIN, PRISCO & VILLAFANE, ESQS.
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Attorneys for Plaintiff, UNCOOKED INC.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
NATALIE PRISCO, ARMAND PRISCO, and
UNCOOKED, INC.

Plaintiffs,

v.

FLAIR & PAPER, INC. and HEYAR PADRON,

Defendants.

-----X
**PLAINTIFFS DEMAND A TRIAL
BY JURY**

Case No.

**COMPLAINT FOR
COPYRIGHT INFRINGEMENT**

Plaintiff, NATALIE PRISCO, ARMAND PRISCO, and UNCOOKED, INC., by and through their undersigned counsel, as and for their Complaint against Defendants, FLAIR & PAPER, INC. and HEYAR PADRON (collectively "Defendants"), allege:

JURISDICTION AND VENUE

1. This is a civil action seeking damages and injunctive relief for copyright infringement under Copyright Law of the United States (17 U.S.C. §101 et seq.).

2. As set forth in greater detail below, this action involves the unauthorized acquisition and transfer of the copyrighted products, by Defendants, those being greeting cards, of Plaintiffs, NATALIE PRISCO and ARMAND PRISCO and distributed through, UNCOOKED, INC., which copyrighted products have significant value and have been produced and created at considerable expense.

3. This Court has jurisdiction over the subject matter of this action pursuant to 17 U.S.C. §101 et seq.; 28 U.S.C. §1331 (federal question); and 28 U.S.C. §1338(a) (copyright).

4. This Court has personal jurisdiction over all of the Defendants by virtue of their transacting, doing, and soliciting business in this District, and because a substantial part of the relevant events occurred in this District and because a substantial part of the property that is the subject of this action is situated here.

THE PARTIES

5. Plaintiffs, NATALIE PRISCO and ARMAND PRISCO, are individuals residing in Brooklyn, New York, which individuals create, publish, sell, and distribute, both in print and electronic format on the Internet, through UNCOOKED, INC., its copyrighted products, those being greeting cards, throughout the State of New York and interstate commerce.

6. Plaintiff, UNCOOKED, INC., is a New York Corporation with its principal place of business at 175 Varick Street, New York, New York 10014, which publishes, sells, and distributes both in print and electronic format on the Internet, the copyrighted products of plaintiffs, NATALIE PRISCO and ARMAND PRISCO, those being greeting cards, throughout the State of New York and in interstate commerce.

7. Upon information and belief, Defendant, FLAIR & PAPER, INC., is a Florida corporation with its principal place of business in Miami, Florida, and a mailing address of 15382 SW 153rd Street, Miami, Florida 33187.

8. Upon information and belief, Defendant, FLAIR & PAPER, INC. is engaged in the business of designing, publishing, selling various products, including greeting cards, on the Internet through its Website and elsewhere.

9. Upon information and belief, Defendant, FLAIR & PAPER, INC. attracts users and customers to its Website by republishing verbatim or close to verbatim copies of plaintiffs' copyrighted works, in their entirety, and without plaintiffs' consent.

10. Upon information and belief, Defendant, HEYAR PADRON, is an individual living in Miami, Florida, and at all times relevant to this action, has owned and controlled, and continues to own and control, Defendant, FLAIR & PAPER, INC.

11. Upon information and belief, Defendant, HEYAR PADRON, is the sole owner of Defendant FLAIR & PAPER, INC., and is the sole employee of Defendant, FLAIR & PAPER, INC., and is the individual responsible for reproducing and offering for sale Plaintiff's copyrighted products, those being greeting cards, on Defendants' websites and elsewhere.

FACTS COMMON TO ALL CLAIMS

12. Plaintiffs are a well-respected source of copyrighted greeting cards and spend substantial amounts of time, money, and effort creating and distributing their copyrighted greeting cards.

13. A website is a specific location on the World Wide Web identified by a unique address known as a Universal Resource Locator ("URL"). Among the channels through which the Plaintiff distributes its greeting cards are websites found at the URLs "uncookedlandthestore.com" and "uncookedland.com". Additionally, Plaintiff offers its greeting cards for sale through vendors such as Paper Source and Whole Earth Provisions.

14. The sale of Plaintiffs' copyrighted product, to wit: greeting cards, is the way in which Plaintiffs earns money. Plaintiffs have been quite successful in this regard. The "uncookedland.com" website, for example, currently has more than 18,000 registered users, and a substantial amount of "hits" each month. (A "hit" occurs when someone visits a website).

DEFENDANTS' INFRINGING SITE

15. Defendants operate a website at the URL "flairandpaper.com" and "flairandpaper.wordpress.com" and through Etsy, a marketplace for vendors of various products, at "etsy.com/shop/FlairandPaper" ("Infringing Websites"). In contrast to Plaintiff, however, Defendants do not create their own copyrighted greeting cards. Instead, Defendants have been and are engaged in a pattern of misappropriating content and infringing copyrights of plaintiffs by republishing verbatim or close to verbatim copies of

Plaintiffs' copyrighted products, in the form of greeting cards, in their entirety, and without the Plaintiffs' consent, and offering them for sale.

16. The Infringing Websites contain numerous copyrighted greeting cards belonging to Plaintiffs which Defendants offer for sale under its names.

17. Attached to the Complaint, as Exhibit "A", are numerous examples of greeting cards offered on Defendants' websites, with the cards being offered by Defendants appearing on the right side of each page, and the copyrighted version of each greeting card created by Plaintiff appearing on the left side of each page.

18. In many instances, not only are the words on each of Plaintiff's copyrighted cards reproduced by Defendants verbatim, but Defendants also use the same or similar images and/or art work on their greeting cards.

19. For their own profit and advantage, Defendants are misappropriating the copyrighted material in which Plaintiff has invested heavily.

20. Defendants' websites rely on the copyrighted material of Plaintiff's website to attract purchasers of greeting cards, and to sell Plaintiff's copyrighted greeting cards under their own name and retain the profits, which copyrighted material are the plaintiffs' stock in trade.

21. Defendants have benefited from a "free-ride" on Plaintiffs' copyrighted content and good will by passing off the greeting cards on their websites as their own creations instead of the copyrighted creations of Plaintiffs and the proceeds of any sales which have been made by Defendants have been retained solely by Defendants and without compensation to Plaintiffs.

22. What Defendants gain by appropriating Plaintiffs' copyrighted material diminishes the value of Plaintiffs' greeting cards and websites.

23. Defendants are usurping the funds that Plaintiffs are entitled to receive from the sale of their copyrighted greeting cards, as well as any additional sales that Plaintiff has

lost by having its potential customers go to Defendants' websites.

24. By copying Plaintiffs' copyrighted greeting cards and posting them on a site other than Plaintiffs' website, Defendants are also diverting potential sales for other products sold by Plaintiffs on its website, which usurps Plaintiffs' sales, which, in turn, has damaged and will damage Plaintiffs' profits.

25. Defendants' conduct has been willful.

FIRST CLAIM FOR RELIEF

26. Plaintiffs incorporate by reference all the allegations of paragraphs "1" through "25", inclusive, as if more fully set forth at length herein.

27. Plaintiffs own copyrighted material found at or through the URLs "uncookedlandthestore.com" and "uncookedland.com". By way of example, each of the greeting cards found on the above websites are the original creations of UNCOOKED, INC. and are copyrighted.

28. Plaintiffs have complied in all respects with 17 U.S.C. §§101 *et seq.*, and have secured the exclusive rights and privileges in and to the copyrights of the above-referenced works. Plaintiffs have been and still are the sole proprietor of all rights, title, and interest in and to the copyrights in their respective works as referenced above.

29. Defendants' conduct violates the exclusive rights belonging to Plaintiff as owner of the copyrights in its greetings cards as displayed on its websites and in stores with a license to sell Plaintiff's products, including without limitation Plaintiff's rights under 17 U.S.C. §106.

30. Upon information and belief, Plaintiffs allege that, as a direct and proximate result of their wrongful conduct, Defendants have realized and continue to realize profits and other benefits rightfully belonging to Plaintiffs and, based thereon, Plaintiffs seek an award of damages pursuant to 17 U.S.C. §§504 and 505.

31. As a result of defendants' conduct, plaintiffs have been damaged in an

amount to be determined at trial but in an amount to be believed to be in excess of \$300,000.00.

SECOND CLAIM FOR RELIEF

32. Plaintiffs incorporate by reference all the allegations of paragraphs "1" through "31", inclusive, as if more fully set forth at length herein.

33. Upon information and belief, Defendants have willfully engaged in, and are willfully engaging in, the acts complained of with oppression, fraud, and malice, and in conscious disregard of the rights of Plaintiffs.

34. Based on the foregoing, Plaintiffs are, therefore, entitled to the maximum statutory damages allowable.

35. As a result of defendants' conduct, plaintiffs have been damaged in an amount to be determined at trial but in an amount to be believed to be in excess of \$300,000.00.

THIRD CLAIM FOR RELIEF

36. Plaintiffs incorporate by reference all the allegations of paragraphs "1" through "35", inclusive, as if more fully set forth at length herein.

37. Defendants' infringing conduct has also caused and is causing substantial and irreparable injury and damage to Plaintiffs' in an amount not capable of determination, and, unless restrained, will cause further irreparable injury, leaving the Plaintiffs with no adequate remedy at law.

38. As a consequence of this dispute, between the parties as to the right, title, and interest in the copyrighted products described above, and pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§2201 and 2202, Plaintiffs also seek a resolution of this ongoing controversy by a declaration of this Court as to the rights of the respective parties in this matter.

39. Based on the foregoing, plaintiffs demand a judgment immediately and

permanently enjoining the defendants, their officers, directors, agents, servants, employees, representatives, attorneys, related companies, successors, assigns, and all others who act in concert or participation with them from copying or republishing any of plaintiffs' copyrighted materials including greeting cards without consent or otherwise infringing plaintiffs' copyrights or other rights in any manner.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

- A. Declaring that Defendants' unauthorized conduct violates Plaintiffs' rights under common law and the Federal Copyright Act.;
- B. On the First Claim Ordering Defendants to account to Plaintiffs for all gains, profits, and advantages derived by Defendants by their infringement of Plaintiffs' copyrights or such damages as are proper, in an amount to be determined at trial but believed to be in excess of \$300,000.00;
- C. On the Second Claim awarding Plaintiffs the maximum statutory damages allowable as defendants have willfully engaged in and are willfully engaging in the actions complained of with oppression, fraud and in malice and in consciousness disregard of the rights of plaintiffs in an amount to be determined at trial but believed to be in excess of \$300,000.00;
- D. On the Third Claim a declaration as to the rights of the respective parties in this matter and a judgment immediately and permanently enjoining Defendants, their officers, directors, agents, servants, employees, representatives, attorneys, related companies, successors, assigns, and all others in active concert or participation with them from copying the republishing any of Plaintiffs' copyrighted materials, including greeting cards, without consent or otherwise infringing Plaintiffs' copyrights or other rights in any manner;
- E. Awarding Plaintiffs their costs, reasonable attorneys' fees, and

disbursements in this action, pursuant to 17 U.S.C. §505; and

F. Awarding Plaintiffs such other and further relief as is just and proper.

Dated: Westbury, New York
December 12, 2017

POLIN, PRISCO & VILLAFANE, ESQS.



ARMAND J. PRISCO, ESQ. [2520]
Attorneys for Plaintiffs
400 Post Avenue, Suite 209
Westbury, New York 11590
516.671.5300

TO: FLAIR & PAPER, INC.
15382 SW 153rd Street
Miami, Florida 33187

HEYAR PADRON
15382 SW 153rd Street
Miami, Florida 33187

STATE OF NEW YORK)
ss.:
COUNTY OF NASSAU)

I, ARMAND PRISCO, JR., being duly sworn, depose and say:

I am one the President and owner of UNCOOKED, INC., one of the Plaintiffs, in the above-entitled action. I have read the foregoing **COMPLAINT FOR COPYRIGHT INFRINGEMENT** and know the contents thereof; the same are true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true.



ARMAND PRISCO, JR.

Sworn To Before Me This
26th day of December, 2017

NOTARY PUBLIC

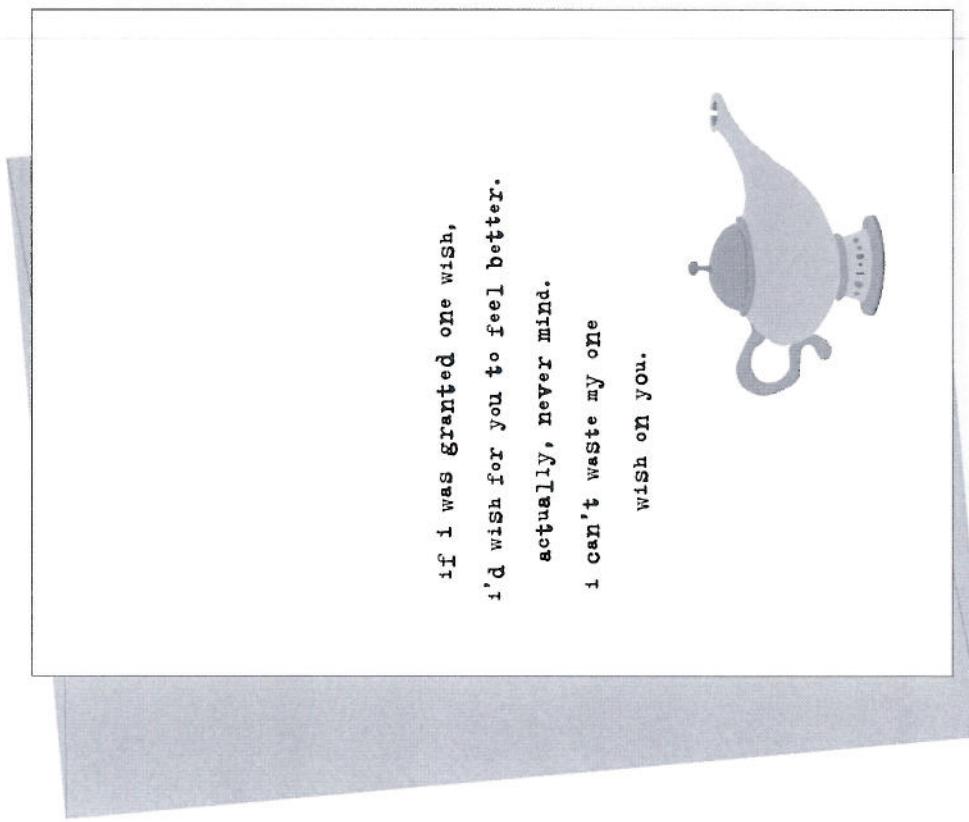
TRACIE A. WYATT
Notary Public, State of New York
No. 01WY6129677
Qualified in Nassau County
Commission Expires July 5 2021

The following cards were being sold on FlairandPaper.com, the Flair and Paper ETSY store and the Flair and Paper wholesale catalog. Some also appeared and were being used to promote the Flair and Paper brand on the company's Pinterest page, Facebook page and Instagram page.

In addition to their presence online, Flair and Paper cards are sold wholesale and are available for purchase in a number of retail locations across the United States. Some of the following plagiarized styles are available in these retail locations.

Additional documentation including a Flair and Paper wholesale catalog, full FlairandPaper.com web pages, ETSY store pages and Pinterest boards for all plagiarized cards on this document can be provided if needed.

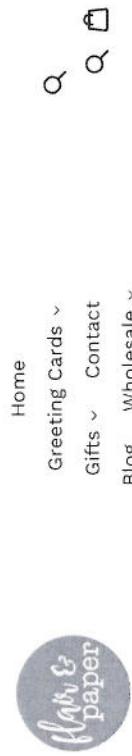
As indicated on the following pages, all text and art on all Uncooked cards is owned and copyrighted by Uncooked Inc.



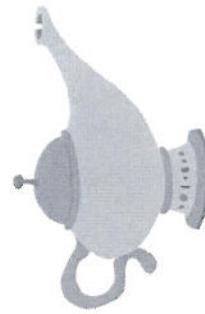
©2007 UNCOOKED INC.

If I had just one wish, I'd wish for your happiness – Flair & Paper
<https://www.flairandpaper.com/collections/love-friendship/products/...>

FREE SHIPPING ON ALL U.S. ORDERS OF \$50 OR MORE WITH CODE "OVER50"



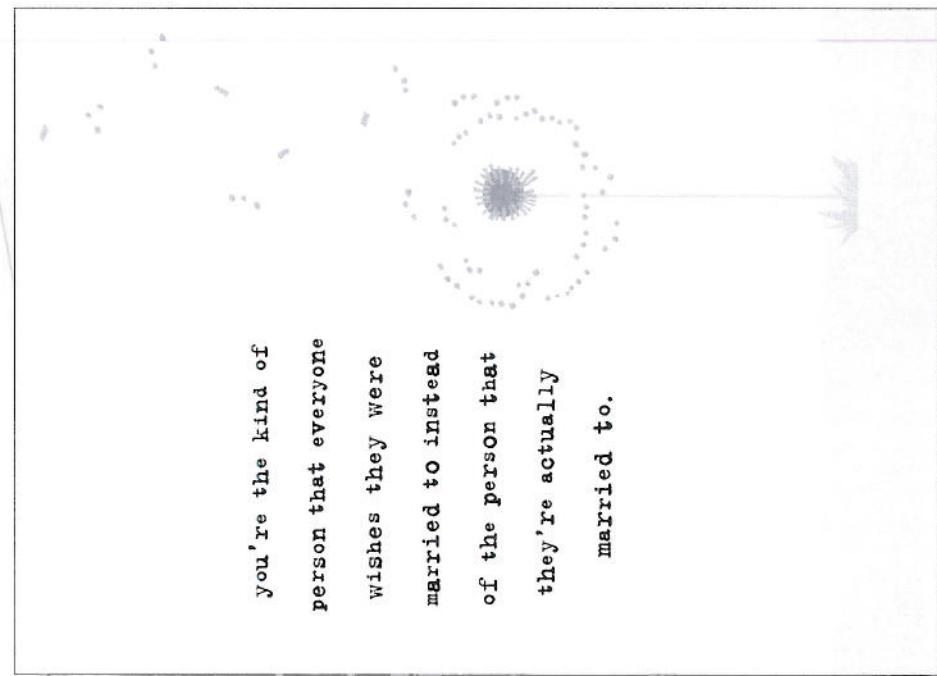
if i was granted one wish,
i'd wish for you to feel better.
actually, never mind.
i can't waste my one
wish on you.



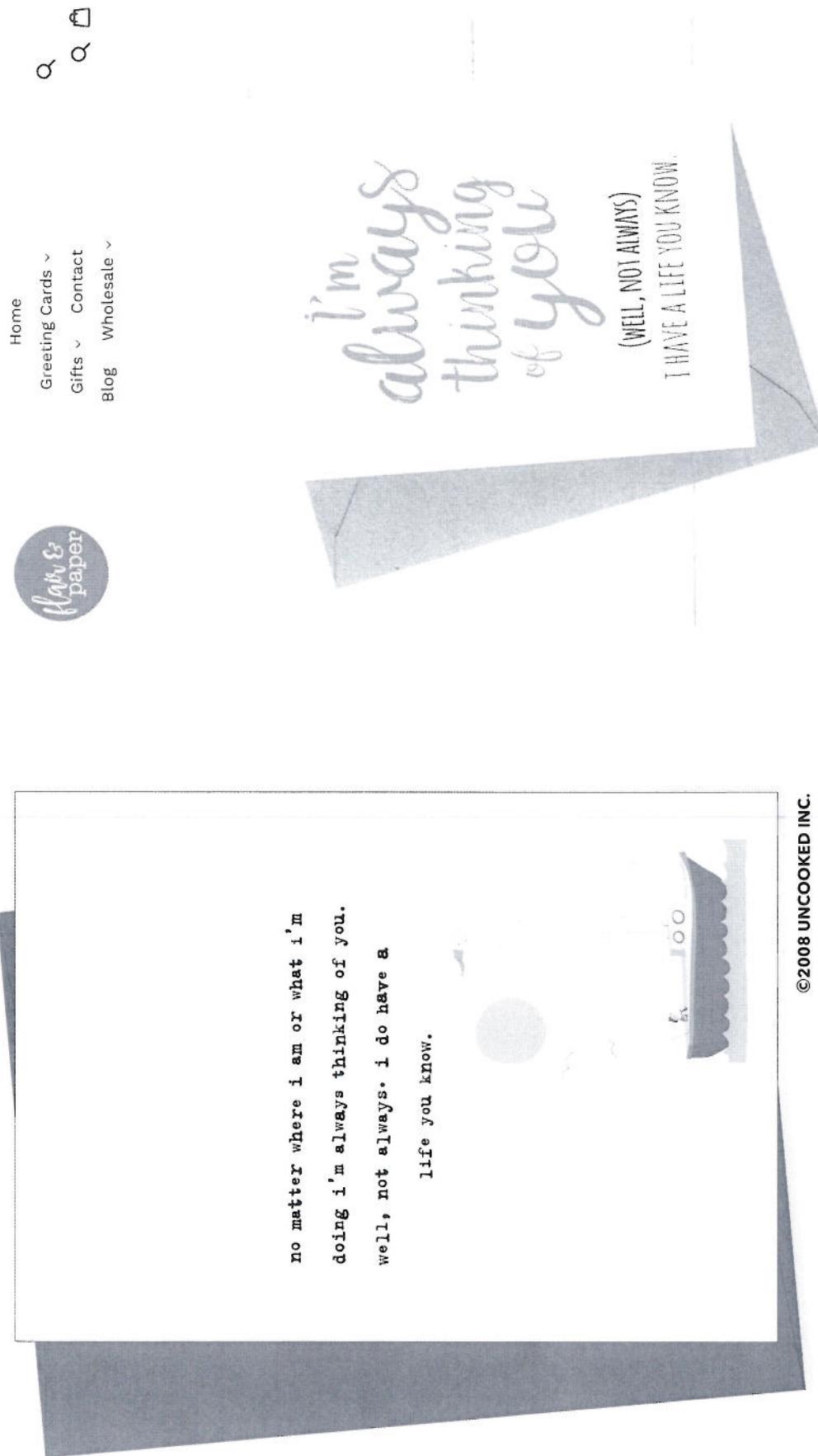
If I HAD JUST
ONE WISH
I'D WISH FOR YOUR
Happiness

JUST KIDDING
I CAN'T WASTE MY ONE WISH ON YOU!

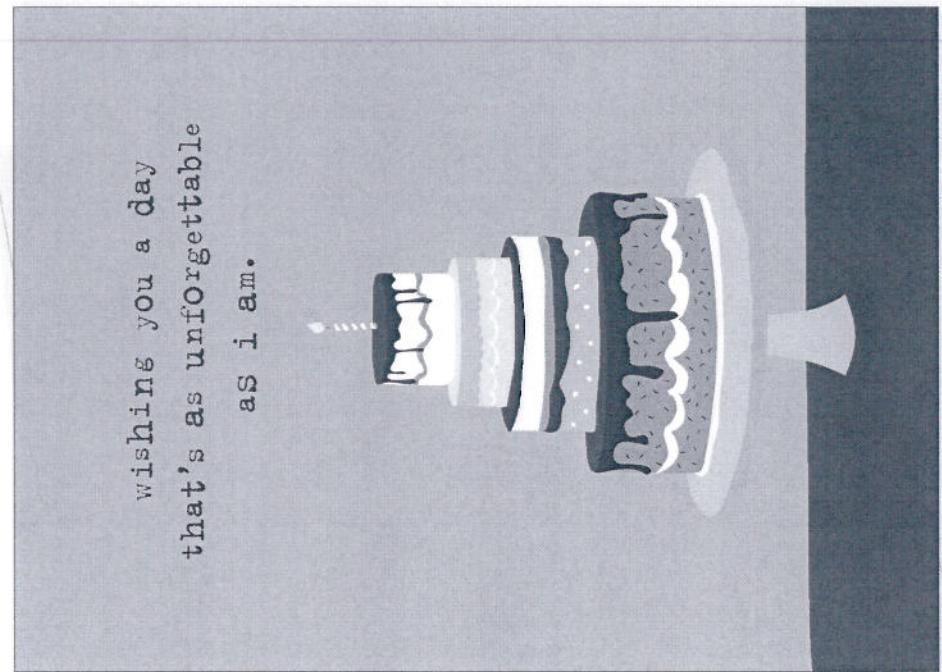
©2007 UNCOOKED INC.



FREE SHIPPING ON ALL U.S. ORDERS OF \$50 OR MORE WITH CODE "OVER50"



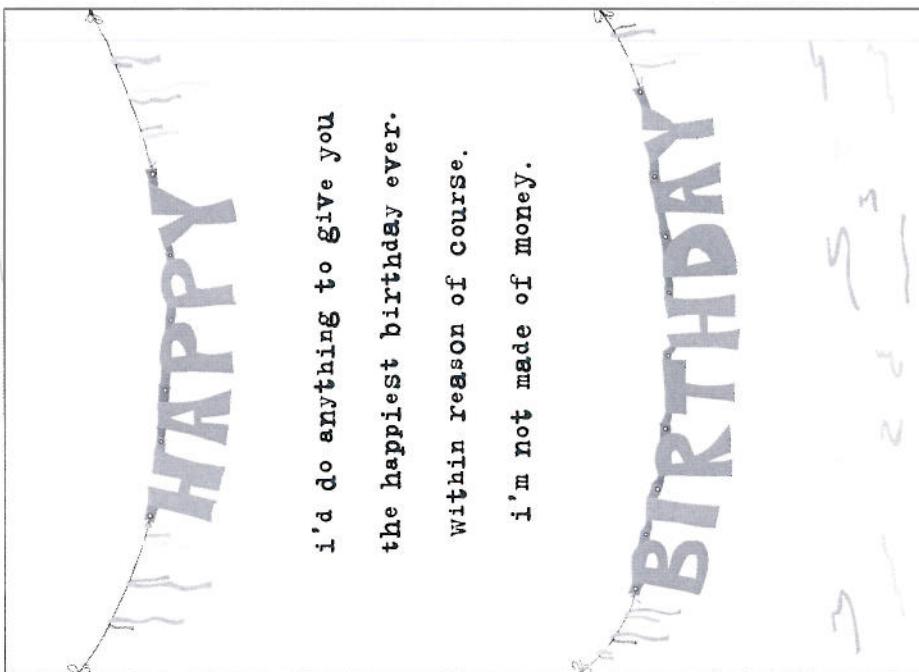
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I would do anything to make you happy (within reason, I'm not made... <https://www.flairandpaper.com/collections/love-friendship/products/...>

FREE SHIPPING ON ALL U.S. ORDERS OF \$50 OR MORE WITH CODE "OVER50"



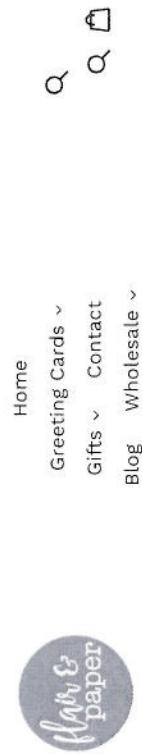
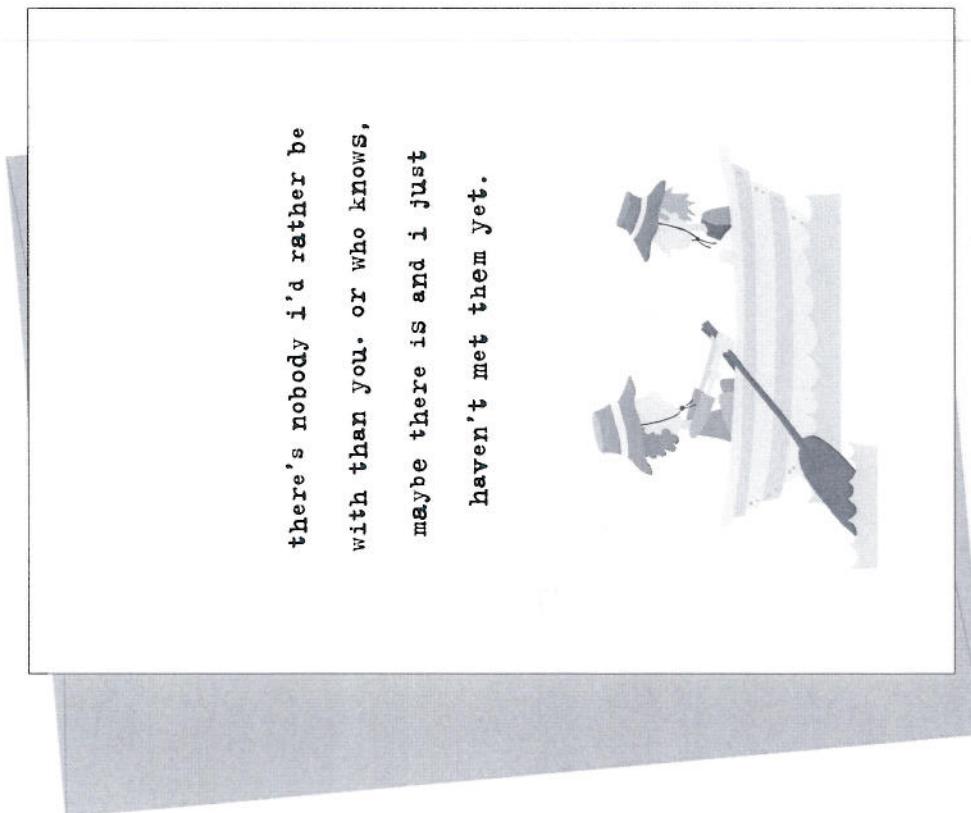
©2012 UNCOOKED INC.



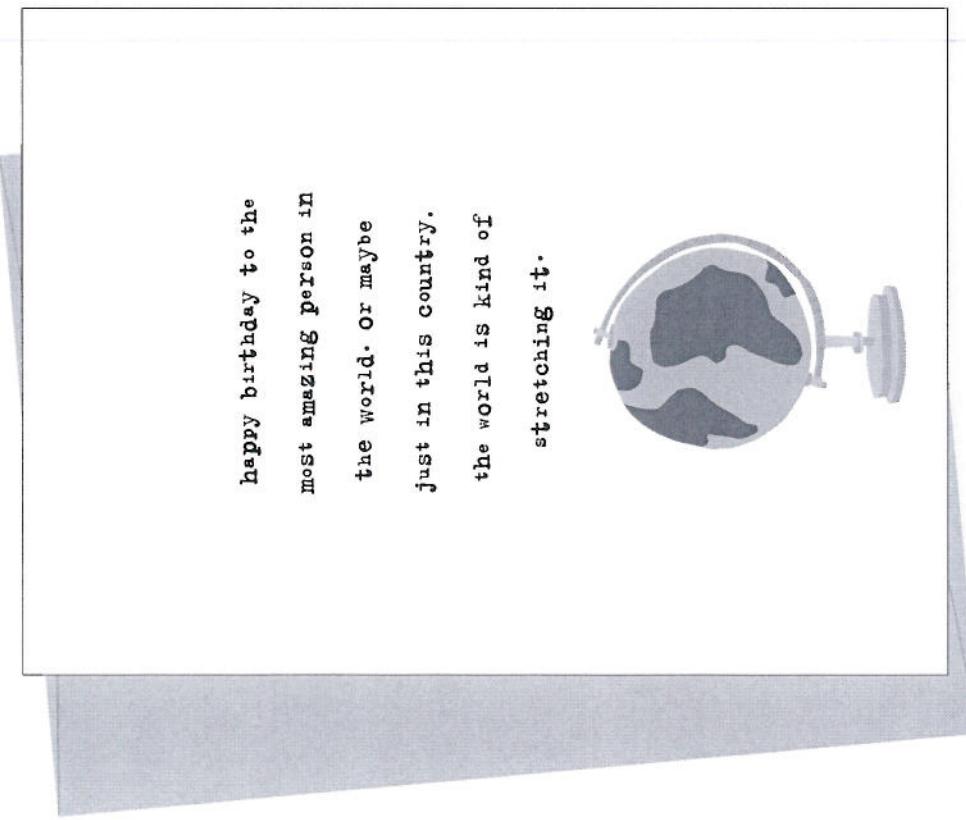
There is no one I'd rather be with. Or maybe there is and I just haven'...

<https://www.flairandpaper.com/collections/love-friendship/products/...>

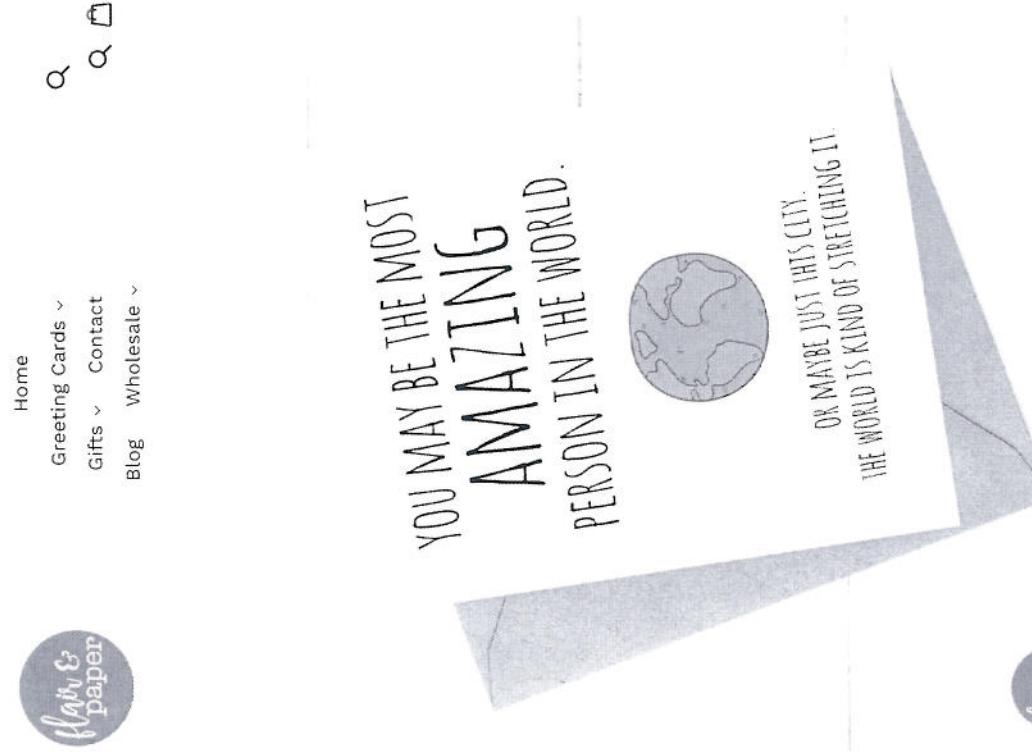
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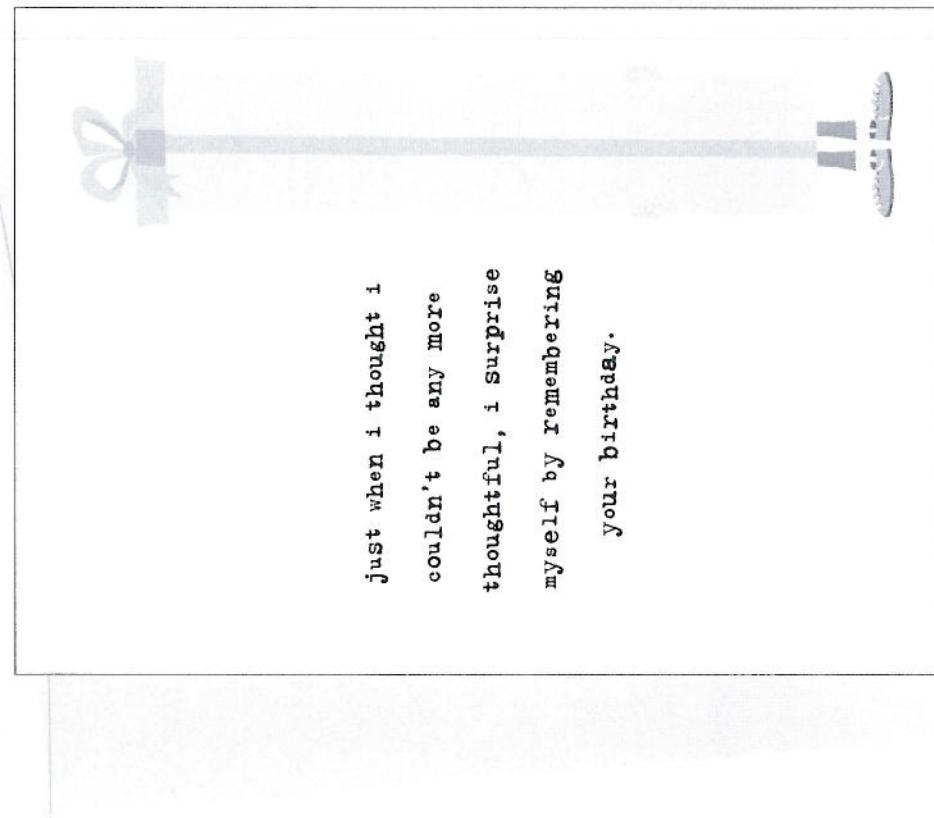
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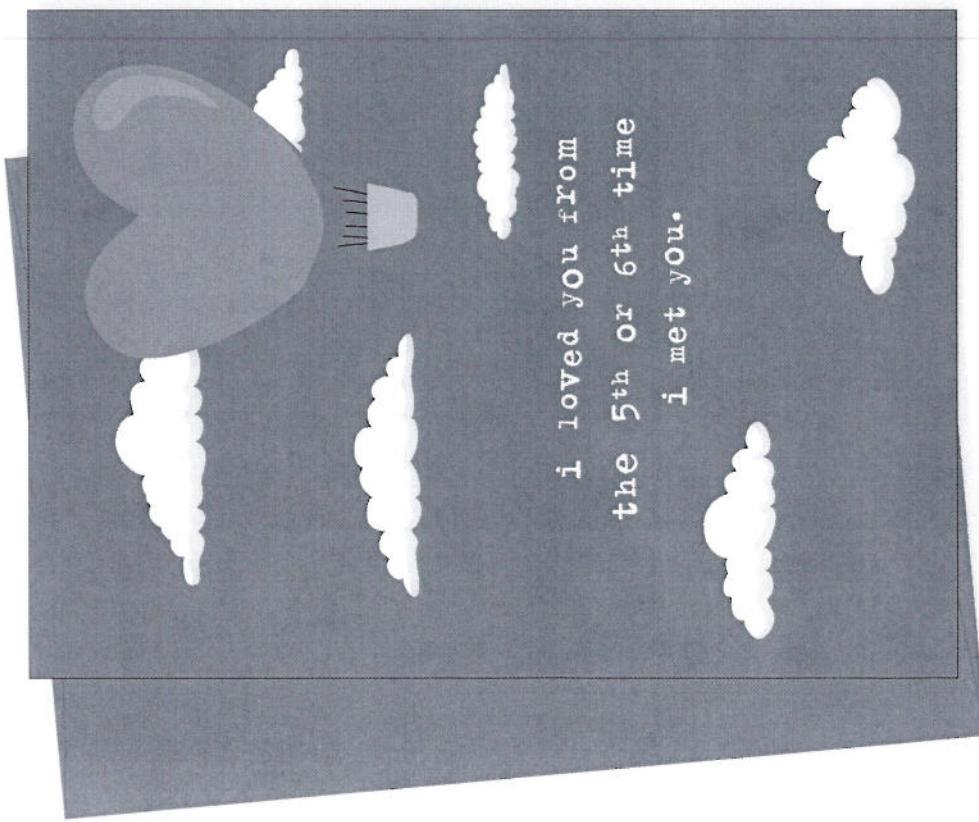


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I knew I liked you the first time our eyes met – Flair & Paper

<https://www.flairandpaper.com/collections/love-friendship/products...>

FREE SHIPPING ON ALL U.S. ORDERS OF \$50 OR MORE WITH CODE "OVER50"



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The screenshot shows an Etsy shop page for 'flair & paper'. The shop's logo is a circular graphic with the words 'flair & paper' in a stylized font. The main banner features a dark blue background with the text 'PREPARING FOR HURRICANE IRMA!' in large, bold, white letters. Below this, a smaller text block reads: 'Thanks for visiting our shop. We are preparing for Hurricane Irma. We hope to open our doors again in a few days.' To the left of the banner, there is a white card with the text 'UHMM... THANKS FOR PUTTING UP WITH MY MELTDOWNS.' and a small drawing of a face with a sad expression. The right side of the banner shows a photograph of a person's hands working on a craft project. The top navigation bar includes links for 'Sell on Etsy', 'Register', 'Sign in', 'Cart', and 'Search'. The main menu categories are 'Clothing & Accessories', 'Jewelry', 'Craft Supplies & Tools', 'Weddings', 'Entertainment', 'Home & Living', 'Kids & Baby', and 'Vintage'. The shop owner's name is 'flair & paper', located in Miami, Florida, with 10259 sales since 2009 and a 4.5-star rating from 1938 reviews. The shop has 2446 favorite items. The page also includes social sharing buttons for Facebook, Twitter, and Pinterest, and a 'Contact' link.

Flair and Paper has had 10,259 sales since 2009 on their ETSY site.

Access site by clicking here:

<https://www.etsy.com/shop/FlairandPaper>

UNITED STATES DISTRICT COURT
EASTER DISTRICT OF NEW YORK

Case No.:

NATALIE PRISCO, ARMAND PRISCO and UNCOOKED, INC.,

Plaintiffs,

-against-

FLAIR & PAPER, INC. and HEYAR PADRON,

Defendants.

SUMMONS IN A CIVIL ACTION and COMPLAINT FOR COPYRIGHT INFRINGEMENT

POLIN, PRISCO & VILLAFANE, ESQS.

Attorneys for Plaintiffs

400 Post Avenue, Suite 209

Westbury, New York 11590

(516) 671-5300

To



ARMAND J. PRISCO, ESQ.

Service of a copy of the within is hereby admitted

Attorney(s) for

Dated: _____